

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

CHRISTYANNA KARPENSKI,

Plaintiff,

v.

AMERICAN GENERAL LIFE COMPANIES,
LLC, d/b/a AMERICAN GENERAL, d/b/a AG
BENEFIT SOLUTIONS CONNECTICUT
CLAIM CENTER; THE UNITED STATES LIFE
INSURANCE COMPANY IN THE CITY OF
NEW YORK, d/b/a US LIFE; and SEABURY &
SMITH, INC., d/b/a MARSH U.S. CONSUMER,
d/b/a MARSH AFFINITY GROUP SERVICES

Defendants.

Case No. 2:12-cv-01569RSM

ORDER ON MOTIONS TO SEAL

THIS MATTER is before the Court for consideration of parties' two motions to file medical documentation under seal. Dkt. ## 148, 160. On July 3, 2013, Defendants moved to file 32 exhibits under seal, including medical records and related deposition testimony, in support of Defendants' motion for summary judgment. Dkt. # 148. Plaintiff has filed a response in support of Defendants' motion to seal. On July 22, 2013, Plaintiff filed a motion to seal 8 declarations "of her past and present health care providers" in support of Plaintiff's opposition to Defendant's motion for summary judgment. Dkt. # 160. The following discussion applies to both motions to seal.

The local rules of this District recognize a strong presumption in favor of public access to the Court's files. Local Rules W.D. Wash. LCR 5(g). The Ninth Circuit has also

1 recognized a strong presumption of public access to documents attached to dispositive
2 motions. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).
3 Unlike the lesser “good cause” standard for non-dispositive motions, parties must meet a
4 “compelling reasons” standard to obtain a court order sealing documents attached to a
5 summary judgment or other dispositive motion. *See id.* at 1177-79; *Foltz v. State Farm*
6 *Mutual Automobile Insurance Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003). To induce this
7 Court’s protection, “the party must ‘articulate[] compelling reasons supported by specific
8 factual findings,’ that outweigh the general history of access and the public policies favoring
9 disclosure, such as the public interest in understanding the judicial process.” *Kamakana*, 447
10 F.3d at 1179 (internal citations omitted). The decision to seal documents is “one best left to
11 the sound discretion of the trial court” upon consideration of “the relevant facts and
12 circumstances of the particular case.” *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599
(1978).

13 The need to protect medical privacy qualifies in general as a “compelling reason.” *G.*
14 *v. Hawaii*, 2010 WL 2607483 (D.Haw. 2010)(sealing deposition testimony under the
15 “compelling reasons” standard because they contain information about Plaintiffs’ medical
16 conditions and treatment); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL 4715793
17 (D.Haw. 2010); *Lombardi v. TriWest Healthcare Alliance Corp*, 2009 WL 1212170, at *1
18 (D.Ariz. 2009). In cautioning parties against filing motions and memoranda under seal, this
19 Court has previously announced that “plaintiff’s medical records and declarations by her
20 treating physicians are entitled to protection.” Dkt. # 71, p. 3. Although the Plaintiff has put
21 her health at issue in this lawsuit, she is nonetheless entitled to the Court’s protection of
22 sensitive medical information whose privacy is ensured by Federal law. *See Health Insurance*
23 *Portability and Accountability Act (HIPAA)*, Pub.L. 104-191 (1996)(regulating use and
24 disclosure of “Protected Health Information.”).

25 In their motion to seal, defendants refer to the parties’ Qualified Protective Order (Dkt.
26 # 38) as providing the basis for sealing documents that relate to Plaintiff’s physical and

1 mental condition and the provision of care. Dkt. # 148. The Qualified Protective Order
2 incorporates definitions and rules regarding transmission of “Protected Health Information”
3 borrowed from HIPAA. Dkt. # 38, p. 2. However, as this Court has previously explained, this
4 agreed protective order does not presumptively entitle the parties to file all information they
5 have designated as confidential under seal. Dkt. # 71, p. 3. *See* Local Rules W.D. Wash. LCR
6 26(c)(2). While the parties may agree upon confidentiality among themselves, they must
7 make the requisite showing of “compelling reasons” as to each document in support of a
8 dispositive motion in order to justify sealing.

9 Based on an *in camera* review of all documents filed under seal, the Court finds that
10 some but not all of the documents contain protected medical information that entitle them to
11 the Court’s protection. The Court finds that all of the exhibits at Dkt. # 150, which Defendants
12 move the Court to seal with support of Plaintiff, are entitled to such protection, as they
13 contain either copies of Plaintiff’s private medical records or deposition testimony making
14 direct, explicit, and detailed reference to the information contained in Plaintiff’s medical
15 records. Likewise, the Court will allow Plaintiff to file under seal the medical record from
16 Plaintiff’s treating health care provider filed at Dkt. # 165, Ex. A.

17 By contrast, the Court finds that all of the exhibits that Plaintiff moves to seal,
18 excepting Dkt. # 165, Ex. A, are not entitled to such protection. The DaSilva Declaration
19 contains information solely related to Plaintiff’s work history and abilities and does not
20 contain protected medical information. Dkt. # 163. Likewise, the Allmon and Karpenski
21 Declarations are not those of a treating physician, contain conclusory statements about
22 Plaintiff’s medical history or statements that are already publicly accessible in previous
23 filings, and do not make sufficiently explicit reference to Plaintiff’s medical records to entitle
24 them to protection. Dkt. ## 167, 168. The five declarations by Plaintiff’s treating physicians
25 filed under seal are distinguishable from those that this Court has allowed the parties to file
26 under seal. Unlike declarations that make explicit reference to private information contained
in Plaintiff’s medical records, these declarations contain only broad and conclusory

1 statements that, for the most part, deny that Plaintiff possesses or has been treated for
2 specified medical conditions. Plaintiff is not entitled to file under the guise of confidentiality
3 declarations by treating physicians that do not themselves contain protected medical
4 information.

5 Accordingly, Defendants' motion to seal (Dkt. # 148) is GRANTED and Plaintiff's
6 motion to seal is GRANTED in part and DENIED in part. The Clerk is directed to **maintain**
7 **under seal** all 32 exhibits at Dkt. # 150. The Court is further directed to **maintain under seal**
8 Dkt. # 165, Ex. A. The Clerk shall **unseal** the declarations filed at Dkt. ## 161-168, excepting
9 Dkt. # 165-1.

10 DATED this 9 day of October 2013.

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12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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